



February 22, 2019

To: [rs@dir.ca.gov](mailto:rs@dir.ca.gov)

Subject: Heat Illness Prevention in Indoor Places of Employment  
Comments on Discussion Draft – January 29, 2019

The California Restaurant Association (CRA) is the definitive voice of the food service industry in the state of California representing over 22,000 food service establishments. Restaurants are highly regulated businesses which operate on very thin profit margins. The challenge for restaurants is to implement any new mandates in a way that mitigates negative impacts to the business given the strict regulatory environment in which they already operate.

The most recent revisions to the indoor heat illness prevention regulations have been simplified and we urge Cal OSHA to continue to simplify the regulation to ease compliance and protect employees. Employee safety is a top priority for the statewide restaurant community. We value our team members, many of which are long term employees that are like family, and they are crucial to the day to day success of our service to the public. Restaurants need to be able to clearly understand the eventual regulations on indoor heat illness prevention, so they can reasonably meet the proposed new mandates.

Restaurants use commercial cooking equipment like gas ranges, broilers, ovens and fryers to prepare menu items for our customers. The California Retail Food Code requires restaurants to heat eggs, meat, poultry and fish to specific temperatures to ensure food safety. We are concerned that the proposed indoor heat illness regulations may conflict with regulations which affect our ability to heat and hold food to the necessary temperatures to protect the public's health and safety from food borne illnesses and comply with the Retail Food Code. We appreciate your offer to participate in the development of FAQs and guidance documents to address these concerns regarding the engineering controls and the California Retail Food Code.

We would like to offer the following comments on the 1/29/19 draft of the Indoor Heat Illness Regulations as proposed:

(a) Scope and Application

We appreciate the addition of the temperature threshold in (2)(C-D) which helps to provide clarity to our members with high radiant heat generating appliances so they can effectively implement the standard in those work areas.

(b) Definitions

Cool-down area: Restaurants have a limited amount of physical space and extremely little, if any is not already being utilized in the kitchen or for customer dining. We would like to thank Cal OSHA for taking our space limitations into account and revising the definition of “cool-down area” to include an outdoor area that is shielded from direct sunlight and high radiant heat sources.

Clothing that restricts heat removal: Heart of the house employees wear chef coats, aprons, pants, shirts and hats designed to protect our employees from contact with hot food items or cooking surfaces and for hygienic reasons. It is important to note that these items that are constructed of knit or woven fibers, serve as an outer layer of protection for our kitchen employees and to protect the work process in the kitchen from contamination. We appreciate the revisions to the definition of clothing that restricts heat removal, which exempts the professional work attire worn by our heart of the house employees.

Indoor: Definitions of indoor spaces should always include a fully enclosed perimeter by a physical barrier that is not open to the outside air. Many restaurants have patios and outside seating areas where customers are served by employees who travel indoors and outdoors during their shift. It would be almost impossible for our members to cool an outside patio to 82 degrees since patios by definition are not a fully enclosed space. Additionally, outdoor patios and seating areas which are open to the surrounding air are often times cooled by misters and customers are offered water as part of their dining experience.

Union representative: Thank you for providing a clear definition of a union representative. It is important to clearly define this term to ensure only unionized restaurant employees are being represented by their union.

(c) Provision of water

Restaurant employees have full access to cool drinking water during their shifts. We acknowledge the importance of water to help cool and hydrate.

(d) Access to Cool-Down Areas

- (1) The recent amendment to this section should be for indoor cool down areas only. We recommend the following revision:

*The temperature in the **indoor** cool down area shall be maintained at less than 82 degrees Fahrenheit, unless the employer demonstrates it is unfeasible.*



Since the definition of cool-down area includes an outdoor space that is shielded from direct sunlight and other high radiant heat sources and is open to the air, it would be impossible to cool an outdoor cool-down area that meets this definition to less than 82 degrees.

( e) Assessment and Control Measures

(1) Directs employers to measure and record temperature or heat index, and to evaluate *all other* environmental risk factors. The evaluation of environmental risk factors should be limited to those defined as such in subsection (b) definitions – environmental risk factors. Therefore, “all other” should be deleted to reference simply environmental risk factors.

(1) (A) Thank you for removing the Note in this subsection mandating employers to comply with section 3204 for record retention and access. Requiring employers to keep records for 30 years was extreme and unworkable.

(1) (B) (3) The requirement to retain records for “12 months or until the next measurement is taken, whichever is later” is a workable requirement for restaurants.

(2) (A) Engineering controls – Many restaurants in California, especially those in coastal communities prone to cooler weather, lease commercial space in older buildings that were constructed without air conditioning. It would be extremely expensive and costly for a tenant to install air conditioning to meet the requirements in this standard. We appreciate Cal OSHA acknowledging the outdoor temperature is cooler in areas of California and providing for natural ventilation to be used when the outdoor temperature is lower than the indoor temperature in the definition of “Engineering controls”.

(B) Administrative controls -Restaurant employees such as chefs, sous chefs, line cooks, pastry chefs and bakers are acclimatized to the kitchen environment. During the lunch and dinner service time periods at restaurants it is unfeasible to reduce work intensity or speed. Food orders need to be prepared in accordance with the time and temperature relationships as outlined in the California Retail Food code, deviating from those procedures would put our employees and customers at risk for food borne illness. The revision in the 10/24/18 draft to change the degrees from 80 to 82 in this section is helpful to restaurants.

(h) Training

We understand the need for new employees to be trained on the employer’s specific indoor heat illness prevention plan. Many employees in our community work at more than one restaurant and/or change employers throughout the calendar year. Some of the outlined topics for the training in the proposed regulation will be universal among all restaurant employers; therefore, an employee friendly solution would be to create a universal evaluation sheet and test to correspond with those topics so new employees who have received prior training in the calendar year can comply with the regulation in an efficient manner and avoid retraining simply due to the fact that they work at more than one restaurant or have a new employer. Additionally, restaurant employees, such as servers, who work in both indoor and outdoor areas



should be able to receive one training that covers both indoor and outdoor heat illness prevention requirements.

( i) Heat Illness Prevention Plan

Restaurants with outdoor dining areas should be able to provide one written Heat Illness Prevention Plan that covers both indoor and outdoor areas of work. We appreciate the revision to this section allowing for a restaurant to include their Indoor Heat Illness Prevention Plan along with their outdoor Heat Illness Prevention Program required by section 3395.

We appreciate the opportunity to provide comment on the 1/29/19 version of the Heat Illness Prevention in Indoor Places of Employment draft standard. Our members want to be in compliance with California's regulations, so it is important to make sure the final standard is clear and practical to implement. Our employees' safety as well as the safety of our guests is of utmost concern.

We would like to continue to work with you to provide input into the crafting of this regulation and accept the offer to participate in the development of the FAQs and guidance documents addressing the concerns regarding the engineering controls and the CA Retail Food code.

Sincerely,



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